IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

C.M.A. (NPD) No.3177 of 2004

Lakshmi Priya .. Appellant

Vs

K.V.Krishnamurthy .. Respondent

PRAYER: Appeal filed against the order dated 16.4.2004 made in F.C.O.P.No.1272 of 2000 passed by the Principal Judge, Family Court, Chennai.

For Appellant : No appearance
For Respondent : Mr.R.Subramaniam

JUDGMENT

(Delivered made by P.D.DINAKARAN,J.)

This is an appeal filed by the wife questioning the decree of annulment of marriage granted by the lower court in the petition filed by the petitioner-husband, who is the respondent herein. The husband filed the petition for annulment of marriage on the ground that the wife was suffering from irregular menstruation, which fact was suppressed at the time of marriage; and as the marriage was not consummated, he was subjected to mental agony and cruelty.

2. The case of the respondent herein, as set out in the original petition filed by him, is as follows :

The marriage of the petitioner/husband with the respondent/wife took place on 5.6.1998 at Uthukottai, Periapalayam according to Hindu rites and customs. At that time, the respondent/wife was employed at Sriharikotta as a Probationer and she used to come to petitioner's house once in a week. The respondent/wife was not interested in marital obligation and was very adamant and the marriage was not

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consummated. The respondent/wife used to have menstruation once in four or six months and the fact was suppressed by her at the time of marriage. The respondent/wife was also taken to Doctor for treatment by the mother of petitioner/husband, but she refused to co-operate and take medicines. Even after setting up a separate residence, the marriage was not consummated and she forcibly entered into his parent's house and is staying there. As the marriage was not consummated and the behaviour and conduct of the respondent/wife caused him mental agony and cruelty, the petitioner/husband filed the original petition.

3. The respondent/wife, who is the appellant herein, resisted the petition contending, inter alia, that the petitioner/husband and his family were not satisfied with the dowry given and were demanding more money, that the petitioner/husband himself told that they would have the sexual relationship after one year without saying any reason, that she was not allowed to sleep with the petitioner/husband by his mother, that she was never allowed to do any work for the petitioner/husband, that she was not allowed to write letters or even talk over phone to her parents, that the petitioner/husband is a drunkard who returns home very late in the nights, that she was ill-treated by the petitioner/husband and his relatives and that the allegation that she was staying in his parent's house is false and she is staying with her father now.

4. The lower Court, based mainly on the statement of the respondent/wife during the course of evidence that the marriage was not consummated till date, and finding that the respondent/wife had irregular menstruation and the respondent/wife has not complied with the marital obligation and thereby caused mental agony and cruelty to the petitioner/husband, held that the petitioner/husband is entitled to a decree of dissolution of marriage on the ground of cruelty.

5. When the matter was taken up for hearing today, there is no representation on behalf of the respondent/wife, who is the appellant herein. We perused the materials available on record and also heard Mr.R.Balasubramanian, learned counsel for the petitioner/husband, who is the respondent herein. Learned counsel for the respondent herein tried to sustain the judgment of the lower Court by contending that it is clearly established from the evidence on record that the respondent/wife had irregular menstruation, that the respondent/wife has not complied with the marital obligation and thereby caused mental agony and cruelty to the petitioner/husband. He further contended that the consent of the petitioner/husband for the marriage had been obtained by wilful suppression of the above material facts relating to the respondent/wife and as such, the marriage is liable

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to be annulled.

6. The only point for consideration is whether the trial Court was justified in granting the decree of divorce on the ground of cruelty.

7. The marriage between the petitioner/husband and the respondent/wife took place on 5.6.1998 and after marriage the husband and the wife were living in the house of husband for a period of one year is not disputed. It is admitted by the parties that the respondent/wife was working at Sriharikotta at that time and she used to visit her husband during weekends.

8. The petitioner/husband filed the petition for divorce on the ground of cruelty. According to the petitioner/ husband, the respondent/wife was not interested in marital obligation and was very adamant and the marriage was not consummated. One of the reasons for the non-consummation of marriage, on which heavy reliance was placed by the trial Court, is alleged to be the irregular menstruation of the respondent/wife. It is true that the respondent/wife herself admitted in her evidence as R.W.1 that she had irregular menstruation and she was taking treatment at the instance of the petitioner/husband. Though the petitioner/husband claimed that the respondent/wife was not co-operating for taking treatment, the fact remains that the respondent/wife was not given treatment continuously. The respondent/wife in her evidence has also stated that when she was given treatment, she had regular menstruation and she is willing to live with her husband. In such circumstance, the evidence of petitioner/husband that the wife was adamant and she was not co-operating for taking treatment cannot be believed. Further, except his oral evidence, there is no other material such as, medical history, prescription, etc. on the side of the petitioner/husband to show that the respondent/wife was given treatment. Though it cannot be denied that in matrimonial cases, the husband and the wife are the best persons to establish their respective cases, particularly when the divorce is sought for on the ground of mental cruelty, yet, when the case of the husband herein is that his mother was taking his respondent/wife to the hospital, but the respondent/wife was adamant and she was not co-operating in taking treatment, he should have examined his mother to prove the same. Therefore, in the absence of any other acceptable evidence, the case of the petitioner/husband that the respondent/wife was not co-operating for the treatment for irregular menstruation and thereby, he suffered mental cruelty because of non-consummation of marriage is not acceptable.

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9. Secondly, the petitioner/husband, in his evidence, has claimed that the respondent/wife was not interested in conjugal relationship. But, on the other hand, the evidence of respondent/wife is to the effect that the petitioner/husband wanted to postpone the sexual relationship by one year and only at his instance the marriage was not consummated. She has further spoken that it is the petitioner/husband who avoided the connubial relationship with the respondent/wife at the instance of his mother. That apart, the respondent/wife was working at Sriharikotta and she used to visit her husband once in a week and the notice issued by the petitioner/husband was served on the respondent/wife while she was at her husband's house which shows that she was living and wanted to live with the petitioner/husband. The respondent/wife in her evidence has stated that she is willing to live with the petitioner/husband.

10. The mental cruelty is a state of mind and feelings and is therefore necessarily a matter of inference to be drawn from the facts and circumstances of the case. The Court should adopt proper approach to assess the cumulative effect of the attending facts and circumstances established by the evidence on record and then only, the inference can be drawn that the petitioner has been caused to suffer mental cruelty by the spouse. In the instant case, though stray instances have been averred by the petitioner/husband against the wife, the cumulative effect of the evidence let in shows that they are individual instances of misbehaviour to be seen in isolation which would not be sufficient to establish the mental cruelty. Further, as already observed, it is the petitioner/husband who postponed the consummation of marriage at the instance of his mother.

11. It is settled law that the burden must lie on the petitioner to establish his or her case, because ordinarily the burden lies on the party who affirms a fact and not on the party who denies it. Here, the petitioner/husband has not proved his case by proper and acceptable evidence that he suffered mental cruelty at the hands of respondent/wife. The trial Court relied on the stray sentence, viz.,the admission of the respondent in her evidence that she had irregular menstruation to base its conclusion, instead of considering the cumulative effect of evidence on record, particularly when the respondent/wife deposed that the petitioner/husband postponed the consummation of marriage only at the instance of his mother and that she is willing to live with the petitioner/husband. As already noticed, the petitioner/husband did not evince any interest to continue the treatment to the respondent/wife for her irregular menstruation. The trial Court should have assessed the evidence on record cumulatively and the approach of the trial Court relying on the stray admission of the respondent wife that she had irregular menstruation, without looking into the other part of evidence

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wherein she deposed that the husband only postponed the consummation of marriage at the instance of his mother and she is willing to life with her husband is not permissible in law. In this view of the matter, we are of the considered opinion that the trial Court was not correct in coming to the conclusion that the petitioner/husband established the cruelty, particularly the mental cruelty due to non-consummation of marriage. We therefore hold that the petitioner/husband is not entitled to a decree of divorce sought for.

12. In the result, the appeal stands allowed and the order of the trial Court is set aside. However, in the circumstances of the case, there is no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

Sasi

To

1.The Principal Judge,
Family Court, Chennai.

2.The VR Section,
High Court, Madras.

+1cc to Mr.R.Subramanian, Advocate Sr 62342

SSV (CO)

km/3.2.

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